

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	CRIMINAL ACTION FILE
	)	NO. 1:06-CR-147-WSD-2
v.	)	
	)	ATLANTA, GEORGIA
ENSANUL ISLAM SADEQUEE (2)	)	
	)	
Defendant.	)	
_____	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE WILLIAM S. DUFFEY, JR.,  
UNITED STATES DISTRICT JUDGE

Monday, January 26, 2009

APPEARANCES OF COUNSEL:

For the Plaintiff:	OFFICE OF THE U.S. ATTORNEY
	(By: David E. Nahmias
	Robert C. McBurney)
	DEPARTMENT OF JUSTICE
	(By: Alexis L. Collins)
For the Defendant:	GARLAND SAMUEL & LOEB
	(By: Donald Franklin Samuel)
	LAW OFFICE OF KHURRUM B. WAHID
	(By: Khurrum B. Wahid)

*Proceedings recorded by mechanical stenography  
and computer-aided transcript produced by*  
NICHOLAS A. MARRONE, RMR, CRR  
1714 U. S. Courthouse  
75 Spring Street, S.W.  
Atlanta, GA 30303  
(404) 215-1486

Monday Morning Session

January 26, 2009

10:39 a.m.

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P R O C E E D I N G S

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(In open court:)

THE COURT: Good morning. This is the scheduled status conference in the United States v. Ehsanul Islam Sadequee, which is Criminal Action No. 06-CR-147.

Would counsel please announce their appearances?

MR. MCBURNEY: Robert McBurney with the United States.

Seated with me is David Nahmias, U.S. Attorney, and Alexis Collins, a trial attorney from the National Security Division of Main Justice.

THE COURT: Good morning.

MR. SAMUEL: Don Samuel on behalf of the defendant. And with me with is Khurrum Wahid, and Ehsanul Sadequee is seated at counsel table as well.

THE COURT: Good morning.

And good morning, Mr. Sadequee.

Could we move that monitor so I could see everybody?

I thought it would be helpful since I have been

1 assigned to this case in light of Judge Cooper's change to  
2 senior status in February to give you a report on what I have  
3 done and where I stand on pending matters so that -- and what  
4 my view is now that I have gotten much further into the case  
5 and have a better feel for the legal issues and what it will  
6 take to process the case for trial, what I find from my  
7 review of the scheduling order that we had agreed to with  
8 counsel earlier.

9 I think it was helpful that of the judges that  
10 could be assigned to this, that because I already have  
11 security clearances, that we have been able to continue to  
12 process the case I think maybe even faster than it might have  
13 been processed before Judge Cooper because of the security  
14 clearances that I already had and my familiarity with these  
15 procedures.

16 I tried a CIPA case in Montgomery, Alabama, so I'm  
17 familiar with those processes and I'm comfortable with how I  
18 can best conduct those, not only to deal with the classified  
19 information, but also to make sure that the defendants'  
20 rights are protected in that process.

21 I have reviewed the record. That's taken some  
22 time, although I committed a lot of time to doing  
23 that. While I haven't -- I can't remember exactly how many  
24 pending motions there were and R&Rs, it seemed to me that if  
25 you added them all up, there was probably eleven to thirteen,

1 somewhere in that range. All but three of those have been  
2 decided and on which I have issued orders.

3 As you know from the orders that I have issued,  
4 hopefully you have a full understanding of my reasoning, that  
5 that record then is complete on why I made the decisions that  
6 I made. And we intend to continue to issue orders that give  
7 you our view of the case law and our reasoning behind the  
8 decisions that we reach.

9 And I would expect that I will be able to issue  
10 orders on what I think are the three remaining R&Rs hopefully  
11 in the next couple of weeks so that those will all be  
12 concluded.

13 As I said, now that I have reviewed the record, I  
14 have gotten substantially into the law in the case, and have  
15 decided the motions that have been presented and upon which  
16 we have already issued orders, I went back over the weekend  
17 to look at the scheduling order to see if there was any  
18 possibility of collapsing the time to get these cases to  
19 trial earlier.

20 And I have concluded that even when this order was  
21 entered -- and as I recall, I expedited some of the dates for  
22 the processing of the case at that time using my  
23 understanding and experience in another unrelated kind of  
24 classified information case that I had in Alabama. But  
25 I thought can this schedule be further collapsed, and I have

1 concluded looking at it and actually looking at a calendar,  
2 that not only is that not possible, but I think it would be  
3 inappropriate to further collapse it, mainly because I don't  
4 think that would allow the defendants to assert all of the  
5 things that they might want to assert, and I'm not going to  
6 rush this case to the prejudice of the defendants.

7           So while we still have a few months until we  
8 actually begin the trial of the case, I do not think that the  
9 schedule can be expedited. And I think if I did that, that  
10 it would be imprudent to do so.

11           So I think the schedule is the appropriate one.  
12 And as recently as this weekend, I renewed my view that the  
13 schedule that is in place is the appropriate schedule for the  
14 case.

15           So that is an update on my involvement in the case  
16 since it was assigned to me just a couple of months  
17 ago. I wanted to have this conference because I wanted to  
18 introduce myself to you, Mr. Sadequee, and to let you know  
19 who it is that is responsible for presiding over your case,  
20 because I thought that was the right thing to do at this  
21 time, now that I had some familiarity with the case. And  
22 rather than interrupt my working on the orders, I thought  
23 that it made sense to wait until the status conference for  
24 you to at least see the person that is presiding over your  
25 matter.

1           So with that, let's go into the other matters that  
2 we want to take up at the status conference. And I will  
3 begin with the government.

4           MR. McBURNEY: Thank you, Judge.

5           The one area that the government finds most  
6 difficult to keep in line with the Court's schedule involves  
7 witnesses or evidence located outside the United States. And  
8 that is why I want to talk about the Rule 15 motion that the  
9 defense has filed and that we responded to.

10           The defense identified seven individuals, only one  
11 of whom in their motion as it stood then indicated a  
12 willingness or an interest or an ability to travel to the  
13 United States.

14           And the government stands ready to assist that  
15 person. That's Manzu Huq, if I pronounce it correctly,  
16 H-u-k.

17           THE COURT: That's the aunt that lives in Canada?

18           MR. McBURNEY: Yes, sir.

19           And if we get the right identifying information  
20 from the defense, we will do everything we can to ensure that  
21 she gets a visa, if a visa is required, and can be here in  
22 court for any proceeding where her attendance is required.

23           THE COURT: Mr. Samuel, what is the timetable for  
24 getting the information that would be required to get the  
25 authorizations for Ms. Huq?

1 MR. WAHID: Khurrum Wahid, Your Honor. Huq.

2 THE COURT: Huq.

3 MR. WAHID: I believe that is the easiest of our  
4 witnesses, and I can probably get that information by the end  
5 of the week.

6 THE COURT: Okay, great. And like I did in the  
7 last hearing, if you could just let my chambers know where we  
8 stand at the end of the week to make sure that if for some  
9 reason you are not able to get the information, how much  
10 longer you will need.

11 And then I want the government to report back to me  
12 the following Friday what the status is with respect to the  
13 information that you received and whether or not there will  
14 be any impediments to having this witness appear.

15 MR. MCBURNEY: Beyond that, Judge, the government  
16 sees it as, if not impossible, an extremely difficult process  
17 of conducting depositions of the other individuals who have  
18 neither indicated a willingness to sit for them or an ability  
19 to sit for them, meaning they are not locatable or they are  
20 in prisons in other countries.

21 So I wanted to flag that for the Court. I think  
22 that is something the Court, the defense and the government  
23 should address today as we look to either a June, if the  
24 other case resolves itself, or an August, midAugust trial  
25 date for Defendant Sadequee.

1           THE COURT: I think there has to be -- I have only  
2 dealt with this overseas deposition issue once before, and I  
3 have read briefly -- because I wasn't going to rule on the  
4 motion today, but I have read briefly in your submissions on  
5 this, and I think that there has to be some predicate  
6 foundation that, you know, we wouldn't be going through some  
7 process that is futile, because you go over there and  
8 somebody says -- and I know that that has happened at least  
9 in one case I have had where they say I'm glad you are here,  
10 but I'm not talking to you.

11           So there has got to be some predicate with respect  
12 to each of these witnesses that if they are not available,  
13 that they would be available through a deposition, because if  
14 they are not, I don't think that I am empowered nor should  
15 I authorize it.

16           MR. WAHID: Yes. Three of the individuals are in  
17 Canada, two of them are in custody, one is not in custody.

18           We have spoken to the attorneys for those  
19 individuals.

20           THE COURT: Who would -- can you just help me on  
21 that?

22           MR. WAHID: Sure. That would be Mubin Shaikh,  
23 Fahim Ahmed and Jahmeel James.

24           THE COURT: So you have talked to their lawyers?

25           MR. WAHID: Yes. Mr. James I believe was released,



1     although the charges I was told by his attorney aren't  
2     dismissed yet. The Canadian government has twelve months  
3     from when they release him apparently in order to continue  
4     the prosecution, otherwise it would get dismissed.

5             So we have spoken to the attorneys for those three,  
6     and as of now as it stands, they are not willing to allow us  
7     to speak directly to their clients. They are willing to  
8     cooperate with us in any other -- you know, in terms of if  
9     there are other ways other than directly speaking to the  
10    clients. But they aren't right now willing to allow us to  
11    speak to their clients.

12            THE COURT: Well, taking that logical next step,  
13    does that mean that they at least at this point are not  
14    willing to allow them to testify?

15            MR. WAHID: That would be correct at this point for  
16    those three individuals.

17            It really was somewhat predicated upon the timeline  
18    of the trials in Canada. And upon my last contact with the  
19    attorneys, which was right around the time I filed this  
20    motion, which was late December, they were at that time  
21    expecting a trial sometime mid this year, which is around  
22    when ours is.

23            It may be a situation where they said their clients  
24    would be willing once their cases are concluded, so that's  
25    why I didn't withdraw those names at this point. But in all

1 candor, I'm telling you what I have been told.

2 THE COURT: And let me tell you how I interpreted  
3 this. I mean, you are preparing the case for trial, and this  
4 was your wish list. If you thought that these people were  
5 available, you certainly wanted to bring them to my attention  
6 and get the names on the table. So I understand that.

7 But I also understand that with respect to one or  
8 more of these people -- obviously with respect to at least  
9 three of them it's fluid. And it doesn't surprise me if they  
10 are under indictment in Canada that at this time that they  
11 are exercising their prerogative not to assist. So  
12 I understand that.

13 MR. WAHID: All right. As to the -- there are two  
14 others, Younes Tsouli and Ahbid Khan, who are in the U.K. and  
15 are both sentenced at this point in time. We have spoken to  
16 their attorneys -- I have spoken to each of their  
17 attorneys. We were trying to arrange a conference call with  
18 myself, Mr. Samuel, the two attorneys, the one that  
19 represents Mr. Tsouli and the one that represents Mr. Khan  
20 for this week.

21 Somewhere around the 2nd or 3rd of January, they  
22 had said they were going to go and speak to their clients  
23 about their willingness to talk to us. The indication -- the  
24 initial indication I got is that they were willing to talk  
25 with us, but they needed to get permission -- the attorneys

1 needed to get written permission.

2 They were both being held in facilities that  
3 weren't in the London proper area, so that would take some  
4 time to go and come back.

5 So my goal is this week to find out --

6 THE COURT: You mean permissions from the  
7 authorities?

8 MR. WAHID: Well, first I'm trying to get  
9 permission from -- an agreement that their clients are  
10 willing to talk to us. And then once we get that down, then  
11 the logistics of if we need to go through the prison system  
12 or how we would do it.

13 THE COURT: Okay.

14 MR. WAHID: So my goal is this week to have an  
15 answer. Assuming that the attorneys made it out to those  
16 facilities, my goal is I am trying to set up a call for  
17 Wednesday to try to find out whether or not we have got an  
18 agreement that Mr. Tsouli and Mr. Khan are willing to speak  
19 to us on behalf of Mr. Sadequee's case.

20 THE COURT: For then those two witnesses, can you  
21 add to the report that you will send to us on Friday what the  
22 status is with respect to them?

23 MR. WAHID: Yes.

24 THE COURT: All right. Can I --

25 MR. WAHID: There is one more witness.

1           THE COURT: I know, but before we do that, with  
2       respect to the witnesses that are in Canada that at least at  
3       this point are not willing to meet with you, I'm assuming  
4       that if you ultimately determine that they are not willing,  
5       that your motion with respect to them will be withdrawn  
6       because there wouldn't be any foundation for it? Is that a  
7       fair assumption on my part?

8           MR. WAHID: Yes, that's a fair assumption.

9           THE COURT: So there is one more, Mr. Saeed.

10          MR. WAHID: Yes, Mr. Hafeez Muhammad Saeed, who is  
11       head of Lashkar-e-Tayyiba, which is based in Pakistan. The  
12       allegation is that the material support is to benefit  
13       Lashkar-e-Tayyiba.

14          In the interim between the time I filed this motion  
15       and today, I believe Mr. Saeed has become a special guest of  
16       the Pakistani government in some custodial scenario.

17          I don't know at this stage how to have access to  
18       Mr. Saeed. I'm not yet willing to withdraw the name,  
19       Your Honor, but I'm working on trying to figure out whether  
20       or not there could be a substitute that would represent the  
21       organization which is really what we are trying to do,  
22       someone who would represent the organization who we would in  
23       some way get a statement from.

24          THE COURT: I'm willing to let that stay open for  
25       some reasonable amount of time, and it seems to me that with

1 just that general description of what you want them for, that  
2 I'm probably going to have to have a more detailed  
3 articulation of what exactly that witness would testify about  
4 so that I could make a determination of whether or not that  
5 is somebody that I will authorize to be deposed because their  
6 information is something that would be relevant and  
7 admissible at the trial.

8 MR. WAHID: Right. I could expand a little, which  
9 is the idea that the material support is for those  
10 organizations, that the actual items that are being alleged  
11 Mr. Sadequee provided, you know, would those in fact be of  
12 any support to those organizations.

13 The organization -- at that time LET was a  
14 completely lawful organization within the boundaries of  
15 Pakistan, so we felt there would be no issue with them  
16 talking to us freely and honestly about their objectives and  
17 what would be of benefit to them and what wouldn't.

18 So in light of recent events, though, I'm just  
19 reevaluating that situation.

20 THE COURT: Okay. So like all the matters that you  
21 are going to keep us posted on, please also keep us posted on  
22 this particular witness or the substitute.

23 But I think at some point, if it's not going to be  
24 Mr. Saeed and it's going to be some substitute, we have got  
25 to get that name on the table so that we can consider a

1 motion with respect to the person that ultimately you would  
2 like to call so I can decide whether or not to allow the  
3 deposition to be taken.

4 MR. WAHID: All right.

5 THE COURT: So I want to stay in touch on the  
6 issue.

7 MR. WAHID: If I have any information by Friday, I  
8 will include it in the report. If not, I will at least  
9 include it in the report that I am still working on it and  
10 don't have any information.

11 THE COURT: All right.

12 MR. WAHID: Thank you.

13 THE COURT: Maybe the best thing for me would be  
14 let's say that you are still working on that. If we could  
15 make Friday the update date so that as you get more  
16 information -- I don't want you to have to do something every  
17 day, but every Friday at least if there is an open issue, I  
18 will be reminded of what the issue is because at some point  
19 I might want to get everybody on the telephone and say we  
20 have got to do something with respect to this person or the  
21 substitute in order to make sure that we keep the schedule.

22 MR. WAHID: Your Honor, is this something that we  
23 are filing -- are we going to electronically file this or  
24 just submit it to chambers and copy the government on it?

25 THE COURT: I'm happy with that, if that's okay

1 with the government?

2 MR. McBURNEY: Judge, I was envisioning an e-mail  
3 status report to Ms. Birnbaum that she would get to you and  
4 we would obviously cc counsel for the defense, and vice  
5 versa.

6 THE COURT: I mean, it is easier for me to manage  
7 information that way, if it's okay with everybody else.

8 MR. WAHID: That's fine. I appreciate it.

9 THE COURT: Thank you.

10 Any response to that, Mr. McBurney?

11 MR. McBURNEY: Very briefly.

12 One, for none of the witnesses identified in the  
13 Rule 15 motion was there in the government's perspective a  
14 sufficient showing of willingness to testify, and you have  
15 addressed that.

16 But it also is a requirement that the testimony be  
17 helpful. Not just that they would testify, but their  
18 testimony would be helpful. And you have already begun to  
19 ask for it for the LET representative, but if it turns out  
20 that the Canadians are willing to speak or the logistics work  
21 in the United Kingdom for a deposition, because they wouldn't  
22 come to the United States, they are convicted terrorists, we  
23 would need to know up front -- and the Court would need to  
24 know -- to assess that the testimony that they are willing to  
25 share would in fact be helpful.

1           THE COURT: I understand that. Here is my thinking  
2 on the process.

3           You know, there is no reason for us to get into  
4 those matters if somebody is not going to be available. So  
5 let's begin with their availability and willingness to  
6 testify.

7           And then if we define people who are available and  
8 willing to testify, then I suspect that Mr. Wahid is going to  
9 want to at that time say, okay, now that I have had a chance  
10 to talk to them and here is what I expect their testimony to  
11 be, that we would get on the telephone and we would set a  
12 schedule for that predicate information to be provided to me  
13 and what your response date would be, and basically allow you  
14 to update your motion in a manner consistent with the  
15 ongoing -- with the interim scheduling order so that we  
16 wouldn't delay the trial.

17           MR. McBURNEY: Great, because that's the second  
18 point is that the logistics involved of doing a recorded  
19 deposition in a British prison I'm confident are enormous.  
20 And so the more time we have to do that obviously the better  
21 so that we don't delay things.

22           THE COURT: All right. Anything else from the  
23 government on Mr. Sadequee's case?

24           MR. McBURNEY: Not at this time.

25           THE COURT: All right. Mr. Samuel, Mr. Wahid,



1 anything from you?

2 MR. SAMUEL: They didn't mention the *Daubert* issue,  
3 if we could just have the same understanding with regard to  
4 the *Daubert* issues that we had for the prior hearing, we  
5 would expect the government to comply with their notice  
6 requirement. And that will raise issues, but they are the  
7 exact same issues in this case as the Ahmed case.

8 THE COURT: And just so that this record in this  
9 case is clear, the discussion that we had about *Daubert* is  
10 that there is a requirement for *Daubert* -- for witnesses to  
11 be -- expert witnesses to be identified, there are -- as in  
12 all cases regardless of the subject matter, there are some  
13 people where experts are identified that actually the defense  
14 might agree to some stipulation as to particular evidence  
15 that needs an authentication foundation and the like, but  
16 that they would be identified, their subject matter, their  
17 testimony would be identified.

18 But then there is the opportunity with respect to  
19 one or more of those people for the defendant to file a  
20 motion questioning their -- either the qualification or the  
21 scope of the testimony from what I understand that there are  
22 going to be one or more experts in which the defense wants to  
23 get a better understanding of what the scope is, might want  
24 to challenge the scope.

25 But it is better to have the statement of what the

1 testimony is going to be and the scope of the testimony so  
2 that we can really focus and litigate the issue that needs to  
3 be litigated as opposed to just some general objection.

4 And you are all good lawyers and I know that you  
5 will focus on that so that we in fact end up presenting to me  
6 the matters that really need to be decided.

7 But we have a place in process for doing that.

8 MR. SAMUEL: We also filed a particularized *Brady*  
9 motion maybe a week and a half ago. I have talked with the  
10 government. They are going to respond.

11 We don't expect the Court to be involved in that,  
12 but if there is -- if the issue is joined on that, we will  
13 let the Court know immediately.

14 THE COURT: Yeah, the sooner there are issues  
15 joined, the better for me, because I can see where we would  
16 plug that into an already pretty aggressive schedule.

17 All right. Anything else?

18 MR. WAHID: Your Honor, Mr. Sadequee would like to  
19 say something.

20 THE COURT: Actually that's a very sensitive  
21 microphone. You might want to -- it will pick up even a  
22 soft-spoken voice.

23 THE DEFENDANT: Good morning.

24 I wanted to ask if dropping some of the names or  
25 individuals for the depositions, will that allow the time

1 schedule to be collapsed?

2 THE COURT: I mean, that's a good question. The  
3 schedule takes into account other statutory obligations that  
4 the Court has and that you have and your lawyers have. So  
5 even if one or more of the witnesses, if you were to tell me  
6 today that you wanted to eliminate all of them, I think it's  
7 unlikely, as I have reviewed the schedule -- and I really  
8 reviewed the schedule over the weekend without much regard to  
9 the Rule 15 motion, because I think we can work with that  
10 motion in the context of the schedule.

11 I have looked at it more does the existing schedule  
12 provide enough time for everybody, including you and your  
13 lawyers, to respond to what needs to be done between now and  
14 the time that we go to trial.

15 So I don't think it does. And until -- even if you  
16 were to eliminate all of your Rule 15 requests for  
17 depositions, I do not think that it would allow the case to  
18 be tried sooner.

19 THE DEFENDANT: My other question was will filing  
20 some sort of a motion to start the speedy trial clock allow  
21 any -- the time schedule to be collapsed?

22 THE COURT: Well, you know, whether somebody files  
23 a speedy trial motion or not, I'm always aware of that. In  
24 fact, we manage our cases against the requirements of the law  
25 as it relates to speedy trial.

1           And in reviewing the schedule and reviewing the  
2 pending matters, my personal belief is -- which is not to  
3 prohibit you from filing the motion, but my personal belief  
4 is that because there are so many pending motions that have  
5 to be decided on R&Rs and because, as I have told you and  
6 I hope that you understand from just looking at the work  
7 product that I have produced on the motions, that those  
8 pending motions generally are taken out of the speedy trial  
9 calculation.

10           And even though I might have been able to take  
11 longer on those motions than I have, we have not taken the  
12 amount of time that most judges I think would take. We have  
13 really worked hard on those. I issued those just as soon as  
14 I can, consistent with what the statute requires with respect  
15 to review before the motions are allowed to be docketed.

16           So -- and I think all of these matters you can talk  
17 to your counsel about. They are both very, very good  
18 lawyers. And I will let you know that they have been in  
19 contact with me already about making sure that we get this  
20 case tried as promptly as possible, but at the same time do  
21 so in a way that your rights aren't prejudiced.

22           And it's been that that has persuaded me that the  
23 schedule that's in place is the right schedule. And to try  
24 the case on the schedule that I have put into place I think  
25 is ambitious, but I think it's the right schedule to make

1 sure everybody's rights are protected.

2 But you have my commitment, as I hope you have  
3 already seen, that we have spent and I have invested an  
4 immeasurable amount of time to make sure that this case gets  
5 tried according to the existing schedule.

6 So I hope that answers your question.

7 THE DEFENDANT: I also wanted to ask about I'm  
8 considering going *pro se*. And I understand that there is a  
9 number of categories, like standby counsel. And perhaps my  
10 attorneys have spoken with you about this.

11 If I do go *pro se*, would I be allowed to have my  
12 attorneys as standby counsel?

13 THE COURT: Well, let me take that question in two  
14 parts.

15 The first is I guess your general statement that  
16 you are thinking about going *pro se*. I have -- I have been a  
17 lawyer for 30 years, I have been in all sorts of practices  
18 including criminal defense practices, and I guess today I am  
19 more convinced than ever that in a case especially like this,  
20 there are so many legal issues, that you need to have a  
21 lawyer representing you.

22 I begin with the belief based upon what I have seen  
23 is that you are a bright man, that you have intellectual  
24 capabilities that exceed the average citizen that I see, but  
25 even the smartest people and those that are willing to devote

1     literally every waking moment to try and defend themselves in  
2     a case like this is would be a really bad and inadvisable  
3     decision on your part.

4             This is just -- I mean, even for me as we get into  
5     the issues, especially as we get into the issues that are  
6     upcoming, and I have been doing this for long time, I have to  
7     sit back as somebody who is trained to do this work and still  
8     refresh my memory, think about what other cases are out  
9     there, that your experience, the experience of a lawyer, is  
10    critical in case like this.

11            So, one, I think it would be a terrible decision on  
12    your part to decide to do this on your own, because it is  
13    very, very hard work. And if you want your rights to be  
14    fully protected, the best way to do that is to have a  
15    lawyer.

16            I would encourage you to continue to discuss this  
17    matter with your counsel. Let them in a longer session with  
18    you begin to maybe explain to you how the issues especially  
19    as we get closer to trial and at trial become more and more  
20    difficult.

21            And I will give you an example. I mean, I tell  
22    people in trials all the time that of all things that I think  
23    lawyers do and judges do, there is nothing more dynamic than  
24    a trial, because ultimately it's people testifying, it's  
25    involving human conduct. And inasmuch as you might know how

1 things are going to come out and what things are going to  
2 happen, you never know. I never know.

3 And so unless you have lots and lots of experience  
4 like your current lawyers, something could happen at trial  
5 where they will know right away to file an objection and to  
6 assert an objection and make me make a legal ruling. It is  
7 very difficult for you to identify those things because you  
8 haven't been doing this for twenty years or thirty years.

9 And that's why I think you have to have a much  
10 fuller discussion with Mr. Samuel and Mr. Wahid, both of whom  
11 are accomplished lawyers, and to think very, very carefully  
12 about even going the next step about what might be available  
13 as a resource to you in connection with the litigation of a  
14 serious criminal matter like this.

15 So I can't tell you how strongly I would advise you  
16 that it would be perilous for you to try to do this on your  
17 own because these are hard issues. And frankly, you have got  
18 two of the best lawyers in the country doing this for you,  
19 which is unusual to have that kind of representation that you  
20 have.

21 THE DEFENDANT: I was also asking if for the very  
22 same reasons as you have mentioned, if I could have them as  
23 standby, like maybe I would just interview one or two  
24 witnesses. Other than that, I would prefer to, you know,  
25 follow that advice as you have laid out. Would that be

1 possible?

2 THE COURT: That's a variation on what you first  
3 requested.

4 Let me ask you to do this, Mr. Sadequee. When you  
5 think further and more thoroughly about what role, whether  
6 it's a big role or a limited role as you just explained, it's  
7 easier for me to make that decision based upon what it is  
8 exactly that you might ultimately decide to do. And it  
9 certainly doesn't preclude that you might decide that your  
10 lawyers would handle everything.

11 So I'm not saying you can't make that  
12 request. What I would encourage you to do is to have a long  
13 discussion with Mr. Wahid and with Mr. Samuel or with just  
14 one of them to think about what it is that you would actually  
15 like for me to consider in connection with the request to  
16 represent yourself and what the scope of that would look like  
17 so that I have a better feel for what exactly you want to do  
18 and then what would be the proper judicial response to that  
19 request.

20 THE DEFENDANT: I have spoken about this issue  
21 with both my attorneys on a number of occasions, and they  
22 expressed that they are not sure whether or not a judge would  
23 allow standby counsel. I mean, sometimes it's standby and  
24 sometimes it's a hybrid or various categories.

25 So I was wondering, if that is possible to have a



1     hybrid, for example, then that is my preference.

2                 THE COURT:   Well, again, I think that rather than  
3     fielding this request in this status conference -- and  
4     I really haven't even thought about this until you brought it  
5     up today -- why don't you try to come up with a better  
6     articulation about what exactly you want me to consider.

7                 And I will tell you this.   This is like every other  
8     issue in this case, I will have to go back and research that,  
9     I will have to, based upon what the facts are that you would  
10    present to me as far as exactly what you want, I will have to  
11    personally go back, because I can't remember everything  
12    because this is a dynamic process.

13                This is a great example of how dynamic it is, that  
14    once I get a specific request for a specific thing, then I'm  
15    the kind of judge that is going to go back and say what does  
16    the law say about that, what is my obligation, what are the  
17    alternatives that I have based upon existing case law to  
18    respond to the request that you make to me.

19                So none of those things I'm foreclosing.   What  
20    I'm saying is that I'm just -- I'm not prepared today to  
21    answer that because I don't have enough information to decide  
22    what the real issue is and what the law is that I have to  
23    follow.

24                THE DEFENDANT:   One last question.   Back to the  
25    previous question.   If I file a motion for speedy -- starting

1 the clock for speedy trial, I understand, Judge, you  
2 mentioned by safeguarding some of my rights in some motions  
3 such as the baggage search and luggage search, I'm willing to  
4 like, you know, sacrifice those motions and, you know, drop  
5 them.

6 At this moment I'm mainly concerned in trying to  
7 speed up, you know, collapsing the schedule. So I'm willing  
8 to, the depositions, the motions from outside to, you know,  
9 drop them if it in fact -- if in fact it will assist in  
10 collapsing the schedule.

11 THE COURT: Most of the motions we -- I mean, we  
12 only have three motions pending. I mean, we have decided  
13 most of the motions. And I considered the schedule knowing  
14 that we had issued orders with respect to most of the  
15 motions and knowing where I am and knowing what instructions  
16 I have given to my clerks who are helping me as to where  
17 we are going to -- how soon we could get the other orders  
18 out.

19 And so I will repeat what I said earlier, which is  
20 knowing the status in my chambers as far as what I need to do  
21 to get orders out on those last three motions -- and what  
22 I mean are the motions generally for suppression, there are  
23 R&Rs to me from the Magistrate Judge, that we are about done  
24 with those.

25 And I knew that when I reached the opinion that

1     this schedule was the right schedule for these cases to  
2     protect your rights and for the processing of the case to  
3     reach a just decision in your trial.

4             So I don't think dropping those motions are  
5     going to affect the ability to collapse the schedule at all,  
6     and I think you should keep those motions pending, let us  
7     make decisions on them, because it is not going to take that  
8     long for you to get a decision from me on what is left to  
9     decide.

10            MR. WAHID:  Nothing else from us.

11            MR. SAMUEL:  Thank you, Your Honor.

12            THE COURT:  Anything from the government in  
13     response to what the defense has raised?

14            MR. McBURNEY:  No, sir.

15            THE COURT:  All right.  Then we will adjourn this  
16     hearing and reconvene in the next few minutes for the  
17     classified meeting.

18            MR. MARTIN:  Your Honor, my client would like to  
19     address you again about an issue that he just raised for the  
20     first time at counsel table similar to what Mr. Sadequee --  
21     the discussion you had with Mr. Sadequee.

22                    And I don't know if you want to do that now or  
23     later.

24            THE COURT:  I think we probably ought to do that  
25     now.  Is he downstairs?

1 THE MARSHAL: He's downstairs.

2 THE COURT: Why don't we take a short break. Let's  
3 get Mr. Ahmed back up, and then we will reconvene here before  
4 we go back and have our further discussion.

5 Okay. We will be in recess.

6 (Proceedings adjourn at 11:15 a.m.)

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## C E R T I F I C A T E

UNITED STATES OF AMERICA :  
:  
NORTHERN DISTRICT OF GEORGIA :

I, Nicholas A. Marrone, RMR, CRR, Official Court Reporter of the United States District Court for the Northern District of Georgia, do hereby certify that the foregoing 29 pages constitute a true transcript of proceedings had before the said Court, held in the city of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 29th day of January, 2009.

*/s/ Nicholas A. Marrone*

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NICHOLAS A. MARRONE, RMR, CRR  
Registered Merit Reporter  
Certified Realtime Reporter  
Official Court Reporter  
Northern District of Georgia